

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

CYFSA Decision 17

Complaint FA21-00038

Children's Aid Society of Toronto

April 24, 2024

Summary: The complainant sought access under Part X of the *Act* for his “entire family file” with the Children’s Aid Society of Toronto (the service provider). The complainant was granted access, in part, to the responsive records but was denied access to information the service provider says relates to other individuals.

In this decision, the adjudicator orders the service provider to grant the complainant full access to three records she finds are dedicated primarily to the provision of a service to the complainant. The adjudicator also orders the service provider to grant the complainant greater access to the complainant’s personal information which can reasonably be severed from other information in records not dedicated primarily to the provision of service to him. The adjudicator upholds the service provider’s decision to deny the complainant access under the *Act* to the remaining withheld information.

Statutes Considered: *Child, Youth and Family Services Act, 2017, Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31, sections 2(1) (definition of personal information) and Personal Health Information Protection Act, 2004, S.O. 2004, c. 3, Sched. A, section 52(3).*

Decisions and Orders Considered: CYFSA Decisions 2, 4, 7, 10, 11, 12 and 13; PHIPA Decision 17.

BACKGROUND:

[1] The complainant submitted a request to the Children’s Aid Society of Toronto (the service provider, CAS or CAST) under Part X of the *Child, Youth and Family Services Act*,

2017 (the *Act*) for the "entire family file."

[2] In its representations, the service provider provided some history about the records located in response to the complainant's request which is helpful to set out here:

The Child Protection Investigation Network ("CPIN") is where a children's aid society documents the service provided to a child or the child's family. The *Act* defines service by providing a list of examples of what it includes with these examples being, by and large, services provided to a child and the child's family. Child protection services are wide-ranging in nature and include investigating allegations of abuse and neglect at both the intake and family service level, providing counselling and other supportive services to prevent children coming into care and arranging adoptions.

Whether a case is at the intake or family services stage, the service being provided and documented is, for the most part, to a minimum of one child and one caregiver. For this reason, these records are not, by their very nature, dedicated primarily to the provision of service to the individual requesting access.

When a child is placed into the care of a children's aid society, the documents relating to the service provided to that child are kept in the child in care file as opposed to the family service file. These records, in contrast to family service records, are dedicated primarily to the provision of service to the child.

[3] In response to the complainant's request, the service provider issued a decision providing him partial access to the responsive records. In its decision, the service provider stated:

We thoroughly searched our records but unfortunately we did not locate a full child-in-care record pertaining to you. There were some documents that are typically found in such a record, and those are enclosed. As well, we are enclosing a copy of the background history written for you by [named individual] in 2002.

In addition, you are entitled to information from a family service record. We have determined that the family service record associated with you is not dedicated to the provision of service to you. This means your right of access is limited to your own personal information from the record. We have therefore removed information from the record that is about other people and/or other matters, in accordance with section 312(3) of *CYFSA*.

[4] The complainant filed a complaint with the Information and Privacy Commissioner of Ontario (IPC) seeking access to the withheld portions of the records. A mediator was assigned to the file to explore settlement with the parties. During mediation, the

complainant took the position that he should have access to any withheld information relating to his deceased family members contained in the records on the basis that he is the last living member of his immediate family.

[5] The service provider conducted two further searches for records during mediation and provided the complainant with unredacted copies of records containing information relating to the complainant's mother.¹ These records appear to have been provided to the complainant outside the access or disclosure provisions of the *Act*.

[6] With respect to the remaining withheld information, the service provider maintained its position that the complainant was not entitled to access this information under the *Act*, citing section 312(3).²

[7] As mediation did not resolve the complaint, it was transferred to the adjudication stage of the complaints process in which an adjudicator may conduct a review. I decided to conduct a review and invited the written representations of the parties.

[8] In his representations, the complainant raises some issues which are outside of the scope of this complaint. The complainant says that the portions of the records released to him contain discrepancies which give rise to questions he has relating to the veracity of statements made by case workers about his mother and the condition of their home. The complainant also questions the quality of placements the service provider found for himself and his sister and documents the difficulties they experienced.³ I will not address the complainant's concerns relating to these issues as the IPC does not have the authority to review the decisions or conduct of the service provider or its employees in their provision of child protection services.

[9] The complainant also says that the records contain many errors relating to dates, places and the names of individuals. Sections 315(9) and (10) of the *Act* set out a service provider's duty to grant a correction along with the exceptions to this duty. However, the party seeking a correction must first make the request directly to the service provider. Based on the information before me it appears that the complainant has not filed a correction request. Accordingly, no further mention of the complainant's position that corrections should be made to the records will be discussed in this decision.

[10] In this decision, I order the service provider to grant the complainant full access to three records I find are dedicated primarily to the provision of service to him. I order the service provider to grant the complainant greater access to portions of the records I

¹ Records relating to a caseworker's visit on December 10 and 11, 1945.

² Section 312(3) states, in part:

... if a record is not a record dedicated primarily to the provision of a service of the individual requesting access, the individual has a right of access only to the personal information about the individual in the record that can reasonably be severed from the record.

³ In support of this concern, the complainant provided correspondence written by himself and his sister's child.

find are not dedicated primarily to the provision of service to him on the basis that his personal information can reasonably be severed from the information relating to other individuals. I uphold the service provider's decision to deny the complainant access under the *Act* to the remaining withheld information.

RECORDS:

[11] The service provider located records, totalling 52 pages which it says comprises of its file for the complainant's family. The service provider says that the file was closed before the development of the CPIN. As a result, the service provider says that its practice of cataloguing documents as child's service records⁴ or family service records⁵ was not applied to this file. The records are dated from 1945 to 1954.

PRELIMINARY ISSUES:

The service provider is a "service provider" within the meaning of Part X of the *Act*

[12] Part X of the *Act* sets out rules to enable individuals to seek access to records of their "personal information" that are in the custody or control of "service providers," and that relate to the provision of a "service."

[13] "Service provider" is defined in section 2 of the *Act* to include a person or entity, including a "society," that provides a service funded under the *Act*. "Society" is defined to mean an agency designated as a children's aid society under section 34(1) of the *Act*.

[14] Part X of the *Act* defines "service" as a service or program that is provided or funded under the *Act* or provided under the authority of a licence (section 281). "Service" is further defined at section 2 to include services for children and their families related to child protection.

[15] The parties do not dispute, and I find, that the service provider is a "service provider" within the meaning of the *Act*, and thus subject to the requirements in Part X of the *Act*.

The complainant has a right of access to his personal information in the records

[16] The parties do not dispute that the complainant has a right of access under section 312(1), subject to the application of exemptions from that right of access, to records of his personal information that relate to the provision of a service to him. Section 312(1)

⁴ Also referred to as child-in-care records or historical child-in-care file.

⁵ Also referred to as family records or historical protection file.

reads:

An individual has a right of access to a record of personal information about the individual that is in a service provider's custody or control and that relates to the provision of a service to the individual unless ...

[17] Section 312(1) sets out three requirements for an individual to have a right of access to a record under Part X of the *Act*.

1. The record must be a record of personal information about the individual,
2. The record must be in the service provider's custody or control, and
3. The record must relate to the provision of a service to that individual.

[18] The right of access in section 312 belongs only to the individual to whom the personal information relates. Part X does not grant a general right of access to records of another individual's personal information.

[19] The extent of an individual's right of access to a record under section 312(1) of the *Act* also depends on whether each record is "*dedicated primarily* to the provision of a service to the individual requesting access" within the meaning of section 312(3). This section reads:

Despite subsection (1), if a record is not a record dedicated primarily to the provision of a service of the individual requesting access, the individual has a right of access only to the personal information about the individual in the record that can reasonably be severed from the record.

[20] Before I consider the question of whether the records are dedicated primarily to the provision of a service to the complainant, I will address whether the records contain the complainant's personal information.

The records contain the personal information of the complainant that relate to the provision of a service to him

[21] Section 312(1) of the *Act* grants an individual a right of access to a record of their own personal information that is in the custody or under the control of a service provider and relates to the provision of a service to the individual, subject to limited exemptions and exclusions.

[22] If a record contains the individual's personal information, it is a record of their personal information. The right of access is determined on a "record by record" basis.⁶

⁶ Under *PHIPA*, as well as *FIPPA* and *MFIPPA*, the IPC applies the "record-by-record" method of analysis to records subject to an access to information request. Applied to requests for access to one's own personal information, the "record-by-record" approach gives requesters a right of access to entire records that

“Personal information” is defined in section 2 of the *Act* as having the same meaning as in the *Freedom of Information and Protection of Privacy Act (FIPPA)*.

[23] The IPC has addressed the meaning of personal information in numerous orders issued under *FIPPA* and its municipal counterpart, the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* (which contains an identical definition).

[24] Through these orders, the IPC has established some principles that assist in determining whether information qualifies as “personal information” within the meaning of those statutes. Among other things, these orders have established that the list of examples contained in section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) of section 2(1) may still qualify as personal information.⁷

[25] The service provider says that the records contain information that qualifies as the personal information of the complainant along with other individuals. The service provider says it has granted the complainant access to his personal information in the records that can reasonably be severed from information relating to other individuals or matters.

[26] The complainant says that he has many questions about the circumstances surrounding him and his sister being placed in care. The complainant says that his mother, father and siblings have passed away and that, as the last living member of his family, he should be provided with the withheld information so that he can “gain more insight into [his] family’s past and get answers to what happened.” In his representations, the complainant says there is a:

... moral obligation, to provide this information to me, to give me closure and because it is the right thing to do.

[27] The service provider refuses to grant the complainant access to the withheld information on the basis that this information does not constitute the complainant’s personal information or cannot be reasonably severed from the information of other individuals. The service provider does not claim that any exemption or exclusion under the *Act* applies to the withheld information.

[28] I have considered the representations of the parties along with the records and find that all of the records contain the personal information of the complainant, namely information relating to his family status and/or his name.⁸ I am also satisfied that the personal information in such records would have been collected for or relate to the provision of a “service” to the complainant and his family, within the meaning of the *Act*.

contain their own personal information, subject to any applicable exemptions. See PHIPA Decision 17, particularly paragraph 61 and footnotes 7 and 110, for a summary of the “record-by-record” approach.

⁷ Order 11.

⁸ See paragraphs (a) and (h) of the definition of “personal information” in section 2(1) of *M/FIPPA*.

The complainant cannot exercise a right of access under section 312(1) of the *Act* on behalf of his deceased or other family members

[29] The service provider acknowledges that the complainant provided it with documentation that his mother and father have been dead for more than thirty years but says that this fact cannot assist the complainant to gain access to the withheld information under the *Act*.⁹

[30] The service provider takes the position that unless the complainant can provide documentation that he is entitled to access the personal information relating to other individuals it has no option but to deny him access to this information.

[31] In some circumstances, a person other than the individual to whom the personal information relates may make an access request, on behalf of that individual.¹⁰ I agree with the service provider's assessment that the documentation that the complainant provided regarding the death of his parents is not sufficient to demonstrate that he is authorized to act on their behalf.¹¹ In addition, there is no other evidence before me, and the complainant has not asserted, that he has the appropriate authority to act on behalf of his parents or any other individuals who may be identified in the records.¹²

[32] I will now turn to my discussion of the two remaining issues in this complaint:

- whether the records at issue are dedicated primarily to the provision of a service to the complainant, and
- whether or not the records are so dedicated, whether to uphold the service provider's decision to withhold certain information in the records.

⁹ The age of the information at issue is not relevant in the context before me as the *Act* provides a right of access to only the requester's own personal information, subject to section 312(3). This is contrasted from a request under *M/FIPPA* in which a requester may have a general right to access the personal information of other individuals if it is determined that disclosure of another's personal information would not constitute an unjustified invasion of personal privacy. Section 2(2) of *M/FIPPA* provides that "personal information" does not include information about an individual who has been dead for more than thirty years.

¹⁰ Such a person must be a lawfully authorized "substitute decision-maker" for the individual. See sections 281, 301(1), 301(4) and 303 of the *Act*.

¹¹ See CYFSA Decision 13 for discussion of the substitute decision-maker provisions of the *Act* applied to a request concerning the personal information of a deceased individual. In that order, the adjudicator found that the substitute decision-making provisions in section 281, 301(1), 301(4) and 303 do not explicitly confer substitute decision-making authority for deceased individuals on estate trustees, or on other persons. It was not necessary that I consider the application of the substitute decision-making provisions in this complaint as the complainant did not assert that he was an estate trustee or had some other authority to act on any other individual's behalf.

¹² The complainant also provided the IPC with copies of documentation he says demonstrate that his siblings have passed away. Based on the information the complainant provided it appears that his siblings have also been dead for over 30 years. However, as mentioned above, the age of the information at issue is not relevant in determining access under the *Act*.

DISCUSSION:

Is each record “dedicated primarily to the provision of a service to the individual requesting access,” within the meaning of section 312(3) of the *Act*?

[33] Earlier in this decision, I made a finding that all the records relate to the provision of a service to the complainant (and his family) and are thus subject to the complainant’s right of access in section 312. However, the scope or extent of the complainant’s right of access also depends on whether each record is “dedicated primarily to the provision of a service to the individual requesting access.” This is because the right of access in the *Act* applies either to a whole record of personal information under section 312(1) or only to certain portions of the record under section 312(3).

[34] Under section 312(3) of the *Act*, if a record is not dedicated primarily to the provision of a service to the complainant, then the complainant only has a right to access his own personal information that can reasonably be severed from the record.¹³ If the record is dedicated primarily to the provision of a service to the complainant, his right of access applies to the entire record, even if it incidentally contains information about other matters or other parties.

[35] Accordingly, to determine the complainant’s right of access to each record, I must determine whether each record is “dedicated primarily” to the provision of a service to the complainant.

[36] The IPC recently issued CYFSA Decisions 11 and 12 which interpreted the “dedicated primarily” requirement in section 312(3) of the *Act* and found it appropriate to adopt the same qualitative approach the IPC has applied to matters decided under the *Personal Health Information Protection Act (PHIPA)*.

[37] Specifically, in determining whether a record is “dedicated primarily to the personal health information of a requester” for the purpose of section 52(3) of *PHIPA*, IPC adjudicators examine the circumstances under which a record was created in a qualitative (not merely quantitative) manner.

[38] *PHIPA* Decision 17 set out the IPC’s approach to the interpretation of section 52(3) of *PHIPA*. Adopting the various factors taken into consideration in the *PHIPA* context, the IPC found in CYFSA Decision 11 and 12 that in order to determine whether a record is “dedicated primarily” to the personal information of a requester within the meaning of section 312(3), the IPC should take into consideration various factors, including:

- the quantity of personal information of the requester in the record;

¹³ See *PHIPA* Decision 17 at paras 85-115, which addresses a similar “dedicated primarily” requirement under section 52(3) of the *Personal Health Information Protection Act, 2004*, SO 2004, c 3.

- whether there is personal information of individuals other than the requester in the record;
- the purpose of the personal information in the record;
- the reason for creation of the record;
- whether the personal information of the requester is central to the purpose for which the record exists; and
- whether the record would exist “but for” the personal information of the requester in it.⁶

This list is not exhaustive.

The parties’ representations

[39] The service provider submits that taking a qualitative approach, none of the remaining records are dedicated primarily to the provision of a service to the complainant and states:

The present case closed prior to the development of CPIN. Based on the records located, it does not appear as if the file was divided into separate sections consisting of children’s service records and family service records. Despite this, CAST has provided the complainant with all of the records to which he is entitled.

In terms of the family service records, the service provided and documented by CAST involves the protection of the complainant and his sibling [name of sister], and corresponding service provided to the complainant’s mother, father, and aunt’s/caregivers; however, the complainant has not provided anyone’s consent other than his own. In completing the request, it was therefore necessary to pull only the personal information of the complainant as only his consent has been provided. In processing the request, the complainant’s personal information has been reasonably severed from the record for the purpose of providing access under the *Act*.

[40] The complainant maintains that as the only living relative he should have access to records pertaining to his family. In support of his position, the complainant outlined the many questions he continues to have regarding CAST’s involvement with his family along with the difficulties he and his sister experienced over the years as a result of being removed from their mother’s care.

Decision and analysis

[41] For the reasons stated below, I find that three records¹⁴ are dedicated primarily to the provision of a service to the complainant.

[42] I agree with the service provider's assessment that the remaining records are not dedicated primarily to the provision of a service to the complainant as they relate to the provision of service to the complainant's family. However, I find that more of the complainant's personal information can reasonably be severed from other information in these records and be provided to the complainant.

Records 24, 30 and 45 are dedicated primarily to the provision of a service to the complainant

[43] Based on my review of the records, I find that records 24, 30 and 45 are dedicated primarily to the provision of a service to the complainant (and not to the complainant together with his sister or other family members). Applying a qualitative approach, I am satisfied that these records would not exist but for the personal information of the complainant and that the provision of service to the complainant is the central purpose for which the records exist.

[44] In these circumstances, section 312(1) of the *Act* provides that the complainant's right of access applies to each of the records in its entirety, even if the record incidentally contains information about other matters or other individuals, subject to any applicable exemptions under the *Act*. The service provider has not claimed that any of the exemptions in section 312(1)(a) to (d) applies to this information and I am satisfied that none could apply. Accordingly, I will order the service provider to grant the complainant full access to pages 24, 30 and 45.

The remaining records are not dedicated primarily to the provision of a service to the complainant

[45] The remaining records document the service provider's provision of services to the complainant's family as a whole and not solely to the complainant. Though the complainant's information appears in some of these records, it appears alongside the information relating to his parents, siblings or other individuals, in the context of the service provider's provision of services to them all. Accordingly, it cannot be said that the central purpose for which these records were created was to provide services to the complainant alone. Accordingly, I find that these records are not dedicated primarily to the provision of a service to the complainant. However, for the reasons stated below, I find that the complainant should be granted greater access to his personal information contained in some of these records.

¹⁴ Pages 24 (handwritten notes), 30 (letter re: ration book) and 45 (letter re: about the complainant).

The complainant should be granted greater access to the family service records

[46] Section 312(3) of the *Act* provides that if a record is not dedicated primarily to the provision of a service to the individual requesting access, the individual has a right to access only his own personal information that can reasonably be severed from the record.

[47] In this case, the service provider has either withheld the family service records in full or provided the complainant with redacted pages. I have examined the records and have determined that the complainant should be granted greater access to the records located on page 12 on the basis that the complainant's personal information can reasonably be severed from other information contained in these records.

[48] Accordingly, I will order the service provider to grant the complainant greater access to page 12. For the sake of clarity, I have provided a highlighted copy of this page to the service provider with its copy of this decision.

Disclosure under the *Act*

[49] A service provider may disclose personal information in limited circumstances under the *Act*.¹⁵ In its representations, the service provider says it considered whether it was authorized, under the *Act*, to disclose the withheld information to the complainant. Particularly, the service provider considered the possible application of section 292(1)(g) (disclosure without consent)¹⁶ and found that disclosure of the withheld information to the complainant would not fit this purpose.

[50] Based on my consideration of the parties' representations, it does not appear that any of the disclosure provisions under the *Act* apply to the circumstances of this complaint.¹⁷ Furthermore, I am satisfied that the service provider properly considered the disclosure provisions of the *Act* and decided not to disclose based on relevant considerations. Given that there is no evidence that the service provider considered irrelevant factors, or that its exercise of discretion was improper, I uphold its decision not to disclose the remaining records under the *Act*.¹⁸

[51] I note that the complainant's representations contain compelling personal arguments in support of his assertion that he should be provided with a copy of his

¹⁵ Section 286(b) contemplates disclosure without consent where other sections of the *Act* permit or require a service provider to disclose personal information relating to the provision of a service to an individual. These are found at sections 292 to 294 of the *Act*.

¹⁶ Section 292(1)(g) states:

A service provider may, without the consent of the individual, disclose personal information about an individual that has been collected for the purpose of providing a service, if the service provider believes on reasonable grounds that the disclosure is necessary to assess, reduce or eliminate a risk of serious harm to a person or group of persons.

¹⁷ Including the disclosure with consent provisions at section 286(a) of the *Act*.

¹⁸ See paras 72 and 73 of CYFSA Decision 4 for a discussion of the IPC's authority to review a service provider's exercise of discretion under the *Act*.

family's file for closure purposes. However, there is no provision in the *Act* that grants access or permits disclosure on compassionate grounds.¹⁹ Accordingly, the complainant's arguments in this regard does not influence the legal question of whether he has a right of access to the withheld portions of his family file or whether the disclosure provisions under the *Act* apply.

ORDER:

For the foregoing reasons, pursuant to section 321(1) of the *Act*,

1. I order the service provider to grant the complainant full access to pages 24, 30 and 45, and greater access to page 12. The service provider is to provide the complainant with copies of these records by **May 30, 2024**.
2. I uphold the service provider's access decision under the *Act* to withhold the remaining records.
3. In order to verify compliance with provision 1 of this order, I reserve the right to request a copy of the records the service provider is to grant the complainant access to.

Original signed by: _____
Jennifer James
Adjudicator

_____ April 24, 2024

¹⁹ CYFSA Decision 4, para 78 and CYFSA Decision 13, para 43.